

GENERAL SERVICES AGENCY  
OFFICE OF LABOR STANDARDS ENFORCEMENT  
PATRICK MULLIGAN, DIRECTOR



**SWEATFREE PROCUREMENT ADVISORY GROUP**  
**Minutes from the December 8, 2022 Meeting**

**MEMBERS PRESENT:** Conchita Lozano-Batista (Chair), Coyote Codornices Marin (Vice-Chair), Jason Oringer, Joyce Kimotsuki, Julie Fisher, John Logan

**CITY STAFF PRESENT:** Hallie Albert (OLSE), Patrick Mulligan (OLSE), Shawn Peeters (OCA), Sailaja Kurella (OCA)

**PUBLIC ATTENDEES:** Charity Ryerson (Corporate Accountability Lab, "CAL"), Avery Kelly (CAL)

**CALL TO ORDER/INTRODUCTIONS**

**1. RESOLUTION TO HOLD MEETING VIA TELECONFERENCE  
AND VIRTUAL MEETING STATUS**

Adopted unanimously.

**2. ADOPTION OF AGENDA**

Agenda for the December 8, 2022 meeting was unanimously adopted.

**3. PUBLIC COMMENTS FOR ITEMS NOT ON THE AGENDA**

There was no public comment.

**4. APPROVAL OF MINUTES**

Change to the October minutes to correct an improper pronoun and add an "e" to "mor." Motion to approve minutes from the October 28, 2022 meeting with changes adopted unanimously.

**5. CONTRACT RECOMMENDATION UPDATE**

Charity Ryerson, CAL, summarized her understanding of Skubal's concerns as understood from the minutes from the October 28, 2022 meeting. Ryerson said that as a distributor the proposed contract change would not expose him to additional liability as long as he complies with the ordinance, which he is already obligated to do.

Conchita Lozano-Batista said Skubal/Banner is concerned that the new change creates a risk too high to continue to contract with the City and this adds to already overburdensome contracting requirements. Banner wants clarity on whether they will be hauled into court and how a distributor can manage risk if they do not know the whole supply chain. Jason Oringer said he had a similar impression and believes Banner is already obligated to comply, so the concern is really with the enforcement of 12U itself. If there is a way to provide assurances that Banner will not be on the hook, the contract change to add a third-party beneficiary right will only help to enforce the existing requirements of the ordinance.

Coyote Marin felt Skubal's concerns about risk are legitimate. There is a way to mitigate the risk, but Skubal is not positioned to do so since he does not have contracts with the suppliers. Skubal was flabbergasted learning about the living wage v. minimum wage of the country requirement. Marin raised placing a cap on a vendor's liability if possible and tailoring the third-party beneficiary language to enforce the living wage requirement. Marin does not think Skubal is powerless to ensure workers receive the living wage rate as Skubal knows that if the price Banner is paying is super low there is no way the workers are getting the living wage.

Lozano-Batista said people are nervous about being hauled into court and asked CAL representatives about using a forum that is less public, but equally effective, like arbitration. Ryerson said Skubal's concerns are likely similar to the concerns expressed when 12U was originally passed. 12U only applies to contracts above \$25,000 so small actors are excluded and third-party beneficiary liability could have an even higher requirement, like \$50,000. Frivolous litigation is a concern and CAL recognizes this. Profit margins can get higher along the supply chain, so liability has to be applied throughout to ensure prices are not so low that the living wage is not paid. CAL is open to a process being added that would mitigate frivolous claims, but a worker typically relies on a group like CAL or WRC to bring a claim so that inherently limits the chances of a frivolous claim being brought.

Lozano-Batista raised the potential of OLSE having a prerequisite prior to litigation similar to the structure the state used to bring discrimination claims. Pat Mulligan discussed how the ordinance only applies to goods purchased for the City and all other laws OLSE enforces pertain to service sector. OLSE has proactive enforcement but 12U does not give OLSE direct enforcement authority. A discussion pursued regarding OCA's efforts to make contracting with the City more accessible and reducing barriers.

Marin said Skubal has no control over the factories and relies on what the suppliers tell him. Marin asked if clear expectations can be set, creating predictability for the vendors, and whether CAL wants this third-party beneficiary right to go to court to be tested. Ryerson confirmed the interest in testing this in court, but CAL sees most issues resolving prior to that. Lozano-Batista said a jurisdictional prerequisite creates a better path to compliance and building that into the contract change would limit court cases. Marin and Mulligan discussed OLSE's ability to subpoena information and limitation of that power internationally.

Julie Fisher inquired about a retaliation provision in the contract change. Ryerson said CAL proposed some anti-retaliation language, but it is questionable how effective a contract can be in preventing or addressing retaliation. Avery Kelly read the anti-retaliation provision in the proposed change and Lozano-Batista stated her belief that the provision creates redress and education. Marin stated they're in favor of a liability cap for the vendors but worries that cap will inhibit the ability for proper redress of retaliation complaints, particularly if there is a mass retaliation action against a group of workers. Lozano-Batista suggested only implementing one mitigation measure – a jurisdictional prerequisite or a liability cap, and not both. There was then discussion about the difficulty in enforcement when the contract has been completed, paid-in-full.

Sailaja Kurella said the City is looking at the hurdles and imposed liability and costs on vendors. Unlimited liability is in base contract so a cap would be good for vendors. She favors clear explanation of expectations and responsibilities of vendors and having an interim step before litigation. LBEs cannot compete with bigger distributors and if they have to propose a higher price so the living wage is paid the vendor may not have leverage. Kurella was not advocating, but wanted to explain the LBE concerns and those concerns articulated by the City leaders. A discussion pursued on how to exempt LBEs or apply differing liability caps on different types of vendors. The current threshold is \$200,000 for commodity contracts with a micro LBE set aside to do an informal solicitation. Having a threshold for the third-party beneficiary liability to kick in

and amending 12U to increase the \$20,000 threshold to conform with LBE threshold were ideas Kurella put forward.

Shawn Peeters pointed out that Banner is an LBE. Discussion continued about squaring LBE laws with 12U to promote contracting with the City for textiles.

Lozano-Batista summarized for the group what they will inquire into: 1. Changing the thresholds, which would require changing 12U versus just changing the contract with the proposed third-party beneficiary addition; 2. Placing limitations on liability; and 3. Establishing a jurisdictional prerequisite or other pre-litigation step.

Next steps were discussed: Oringer pointed out that elected leaders are busy and they need to present a few clear ideas. Marin said they should present one idea and clearly articulate the steps needed to make it happen. Lozano-Batista said the contractual limitations can be implemented within the proposed contract changes, including the jurisdictional prerequisite. She asked CAL to revisit the changes to address numbers 2 and 3 to address any stakeholder concerns. CAL will present a draft to the group.

## **6. OCA UPDATE**

Peeters reviewed the PO Releases and difficulty he is having with Muscatellos. Banner is participating and he will continue to try to obtain forms from Muscatellos.

## **7. POTENTIAL ITEMS FOR FUTURE AGENDAS**

WRC

Contract Updates

OCA updates

Efforts to recruit new SPAG members